



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 8, 1998

Mr. Paul C. Sarahan
Acting Director
Litigation Support Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-2395

Dear Mr. Sarahan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118831.

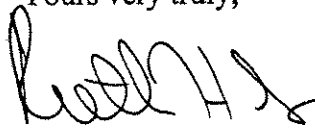
The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for information concerning a complaint made against a company. You indicate that, except for the portions which would identify the complainant, information concerning the complaint has been released. You redacted the information which would identify the complainant and assert that this identifying information is protected under the informer's privilege aspect of section 552.101 of the Government Code.

Texas courts recognize the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act. Open Records Decision No. 549 (1990). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See Roviario v. United States*, 353 U.S. 53, 59 (1957) (explaining the rationale for informer's privilege): Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). Although the informer's privilege aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can also apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983).

You explain that the complainant alleges violations of section 26.121 of the Water Code, which may result in civil penalties under state or federal law. We agree that you may withhold all identifying information about the complainant, as shown by your markings on the documents at issue. Open Records Decision No. 549 (1990) (privilege excepts informer's statement only to extent necessary to protect informer's identity). In making this ruling, we assume that the identity of the informer/complainant is unknown to the company's owners. Open Records Decision No. 202 at 2 (1978) (exception inapplicable if identity of informer known to subject of communication)

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118831

Enclosures: Submitted documents

cc: Mr. Dyke Henderson
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(w/o enclosures)